IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3899 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MALEBHAI RAMABHAI ODEDARA

Versus

POLICE COMMISSIONER RAJKOT

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/11/1999

ORAL JUDGEMENT

The detenue preferred Civil Application No.7948/99 for an early hearing on the ground of his sickness. A medical certificate indicated that he was suffering from paralysis / and this Court directed the Registry to post this matter for final hearing on 16th August 1998. The matter came to be adjourned from time to time and has been taken up today for final

hearing.

1. The petitioner came to be detained under PASA by virtue of an order passed by the Commissioner of Police, Rajkot city, Rajkot on 30th April 1999 in exercise of powers u/s 3[1] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as `the PASA Act' for short]. The detaining authority in the grounds of detention dated 30th April, 1999, while recording subjective satisfaction, observed; that the petitioner is pursuing his illegal and anti social activities consistently, since 1977 till the date of passing of order, as many as 31 offences came to be registered at various places like Rajkot city, Porbandar, Kutiyana, Junagadh, Surat etc. Out of these offences, the cases relating to offences at Srl. No. 1 to 25, the detenue came to be acquitted by the Court on the ground that the offences were not proved against the detenue and the cases are pending for rest of the offences. In all the cases wherein the detenue came to be acquitted by the court as the cases could not be proved against him, the detaining authority recorded that the witnesses did not support the prosecution case against the detenue because of threats administered by the detenue and his associates and because of the feeling of fear suffered by the witnesses from the detenue. The detaining authority further recorded that all these offences are not taken into consideration by the detaining authority while passing the order of detention of the petitioner, but is mentioned only to record the past criminal antecedents of the petitioner and a list of these offences is annexed with the grounds of detention.

The detaining authority also took into consideration two subsequent offences registered with Dhoraji city police station vide Cr.R. No. 5/99 and Rajkot Taluka police station Cr.R. No. 74/99. The detaining authority also took into consideration the statements of two witnesses who claimed to have witnessed the illegal and anti social activities of the detenue resulting into disruption of public order. The authority recorded a subjective satisfaction that the facts stated in the statements of these two witnesses and the fear expressed by them were correct and genuine and therefore, it was necessary to exercise privilege u/s 9[2] of the PASA Act. The detaining authority was satisfied that the detenue / petitioner is a dangerous person as defined under the PASA Act. The detaining authority also recorded a satisfaction that, in the two above referred offences with Dhoraji city police station and Rajkot

Taluka police station, there is sufficient material against the detenue and a chargesheet will be filed against the detenue in respect of those incidents. The detaining authority thereafter considered the possibility of resorting to less drastic remedy for preventing the petitioner from continuing his illegal and anti social activities and ultimately, recorded that it is necessary to immediately prevent the petitioner from continuing his illegal activities. For that purpose, detention under PASA is the only remedy available and the order of detention, therefore, came to be passed u/s 3[1] of the PASA Act.

2. The petitioner has approached this Court with this petition under Article 226 of the Constitution of India to challenge the order of detention. Many grounds are raised by the petitioner. One of the grounds is that the statement of the detaining authority in the grounds of detention that it has not considered any of the offences listed on page 45 to 47 while passing the order of detention is only an eye-wash. As a matter of fact, the detaining authority has considered all such offences filed against the petitioner and the fact of petitioner having been acquitted on account of the witnesses not supporting the case against the petitioner is considered by the detaining authority. The detaining authority was influenced by this factor while passing the order of detention. The detaining authority has not supplied to the petitioner any of the judgements or orders passed in the cases where the petitioner came to be acquitted. The petitioner is therefore deprived of his fundamental right of making an effective representation and the detention would therefore stands vitiated.

3. Heard Mr. Gondalia, learned advocate for the petitioner and Mr. Joshi, learned AGP for the respondents.

4. At the outset, it may be noted that none of the respondents have filed any affidavit in reply.

5. Mr.Gondalia, learned advocate appearing for the petitioner has pressed into service the above grounds. He has taken this court closely through the grounds of detention. He has read over the grounds of detention and submitted that although the detaining authority has categorically stated in the grounds of detention that it has not taken into consideration the 31 offences registered against the petitioner while passing the order of detention, it is only a mechanical chanting of rituals. He submitted that when the detaining authority

has specifically observed that the detenue came to be acquitted in 25 cases because of the witnesses not supporting the prosecution case against the petitioner / detenue, because of the threats administered by the petitioner and / or his companions. The detaining authority did apply its mind and made this observation. This observation could not have been made without applying mind to this aspect and if the mind is applied, then it cannot be said that it has not been considered by the detaining authority. Mr. Gondalia submitted further that the detaining authority has not supplied any material either in form of deposition of witnesses or in form of judgement and/or order of the court acquitting the detenue in the 25 cases. The observation therefore made by the detaining authority could not be properly replied to or represented against, effectively by the detenue and the detenue is therefore deprived of his constitutional right of making an effective representation. Mr. Gondalia has relied on an unreported decision of this Court in Special Criminal Application No.1705/92 decided on 6/8/93 [Coram : S.D.Shah & R.D.Vyas, JJ]. The Division Bench in the said judgement observed that it is not possible to compartmentalize a human mind and say that one compartment did not take into consideration the information lying in the other compartment and therefore, when the detaining authority takes into consideration past incidents and makes certain observation in relation to the past antecedents, it cannot be said that it is only by way of reference to the past history.

6. Mr. Gondalia therefore submitted that the detaining authority has taken into consideration certain factors which it could not have taken into consideration and the detenue is deprived of making an effective representation and because of this two fold defects in the detention order, the petition may be allowed and the order of detention may be set aside.

7. Mr. Joshi, learned AGP has opposed this petition. He has strenuously argued that reference to past criminal cases in the grounds of detention is only by way of a reference to the antecedents and the detaining authority was not influenced by these aspects. The detaining authority has categorically stated so in the grounds of detention. The detaining authority has not taken into consideration all 31 offences as stated in the grounds of detention and therefore, there is no question of supplying copy in relation to those cases, as argued by the other side and the petition, therefore, deserves to be dismissed.

8. The detention order is based on grounds of detention and if the grounds of detention are considered, it is amply clear that the detaining authority has stated that 31 offences came to be registered against the detenue out of which in 25 cases, the detenue was acquitted. The authority further recorded that the acquittal was because of the fact that the witnesses did not depose against the detenue due to threat administered by the detenue and his associates. The authority in the very next breath states that these cases are not considered by the authority while passing the order of detention. If the 31 cases registered against the petitioner were referred to only as a history, then reference to those cases would have been simpliciter stating the status of the cases. The observation by the detaining authority that 25 cases resulted into acquittal because the witnesses did not depose against the detenue because of the threats administered by the detenue and his associates indicate that the detaining authority did have any material before it for making this observation which ought to have been supplied to detenue. If there was no material to support these observations, the order is without material and therefore, bad in law. In either case, the order would stand vitiated. This also indicates that the detaining authority did take into consideration this aspect after applying its mind. This could not have been observed by the detained without taking into consideration either some observations made by the trial court or without considering the tenor of the deposition of the witnesses and therefore, when the detaining authority says that this is only a narration of past history and it is not considered while passing the order of detention, to this Court, it doesn't appeal. This court fails to appreciate as to how and why these observations could have been made. If the detaining authority was not influenced by these aspects and was not to take into consideration these aspects while passing the order of detention. In fact, the observations reflect consideration of conduct of the detenue even subsequent to the registration of offences against him at the time of trial and therefore, the mentioning of acquittal in 25 cases is not merely a statement of history of the detenue, but of his conduct which might have weighed with the detaining authority, may be unwittingly.

9. In this regard, the decision relied on by the petitioner in Special Criminal Application No. 1705/92 may be referred to. The Division Bench observed,

"The approach of the detaining authority in para-7 of the grounds of detention is inconsistent and is not convincing. It has unfortunately dissected human mind into two compartments where the authority wants to believe that it has not permitted active compartment of his mind by taking into consideration the material which it has stored in the nonactive compartment of the mind. The exercise is, as stated hereinabove, not a permissible exercise."

The Division Bench also observed that,

" However, we do not as a broad proposition of law think that mere reference to past activity simply would also vitiate the order of detention"

10. In the instant case also, an attempt is made by the detaining authority to indicate that it has not taken into consideration the 31 cases registered against the petitioner in past, but if the language that is employed while recording the grounds of detention is considered and if the grounds of detention read as a whole, the construction tried to be made by the learned AGP Mr. Joshi is not acceptable. It is clear that the detaining authority was influenced by the fact that the detenue was acquitted because of the fact that the witnesses did not support the prosecution case out of fear and the threats administered by the detenue and his associates. The contention that it is not considered by the detaining authority, therefore, cannot be accepted. The order of detention would therefore stand vitiated as the subjective satisfaction recorded by the detaining authority would itself stand vitiated as the authority was influenced by factors which cannot be said to be relevant or germane while the powers were exercised.

11. It is true that mere reference to past incidents and history would not indicate that the detaining authority took into consideration these aspects while passing the order of detention. But when the detaining authority has applied mind and has come to a conclusion that the detenue came to be acquitted because the witnesses did not support the prosecution case because of the threats administered by the detenue, then it is certainly a factor which is more than a simple reference to past incidents.

12. The authority after observing about the acquittal

in 25 cases and reasons therefor has stated that it has not considered the same, but has mentioned only by way of past record. The whole tenor of this contention if taken collectively would indicate that the purpose behind mentioning this details was with a view to draw attention of the detenue and if that be so, the detenue ought to have been supplied with the materials on basis of which the observations were made by the detaining authority, which has not been done. In fact, acquittal in 25 cases and reasons therefor is mentioned to emphasize the need for detention under PASA Act and therefore, relevant material ought to have been supplied.

13. The order of detention is bad, therefore, on the above grounds itself. However, another factor that requires to be considered is that the detaining authority has not stated in the grounds of detention nor has it filed any affidavit to indicate that in fact it was not influenced by these aspects, nor it is clarified in the grounds of detention as to how the authority came to this conclusion that the witnesses did not support the prosecution case because of the threat administered by the detenue. No documents in this regard are supplied to the detenue. Under the circumstances, in absence of affidavit, it is difficult to accept that the detaining authority has not considered the 31 offences registered against the petitioner, and that in fact it was not influenced by it.

14. In this view of the matter, the petition deserves to be allowed and the same is allowed. The impugned order of detention passed by the Commissioner of Police, Rajkot city, Rajkot, dated 30/4/1999 in respect of the petitioner Maldebhai Ramabhai Odedara, is hereby quashed and set aside. The petitioner be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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